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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 506

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF LEE WILSON AND COMPANY, A BUSINESS TRUST,
Petitioners,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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vs.

THE UNITED STATES,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The petitioners, J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson and Company, a business trust, pray that a writ of certiorari be issued to review the judgment of the Court of Claims entered in the above-entitled cause.

Opinion Below

The opinion of the Court of Claims was entered July 11, 1949 (R. 177-188), and is reported at 84 F. Supp. 876.

Jurisdiction

The judgment of the Court of Claims was entered on July 11, 1949 (R. 197), and a motion for a new trial filed by petitioners was overruled on October 3, 1949 (R. 197). The

jurisdiction of this Court is invoked under Title 28, United States Code, section 1255.

Questions Presented

1. Did the Court of Claims err in holding that, after the Secretary of Agriculture made payments to petitioners in full settlement for their compliance in the Government farm programs for the years 1933, 1934, 1935, and 1936, his successor may, in the absence of fraud, reopen those settlements, assert that petitioners were overpaid in those years, and set off such alleged overpayments against amounts admittedly earned by petitioners in the 1938 farm program?

2. Did the Court of Claims err in holding that the Government did not have the burden of proof with respect to its plea of set-off?

3. Did the Court of Claims err in failing to hold that recovery of the amounts claimed in the Government's plea of set-off was barred by the Supplemental Appropriation Act of February 11, 1936, as amended, and by section 74 of Title 31 of the United States Code, as contended by petitioners?

4. Did the Court of Claims err in failing to render judgment in favor of petitioners for the amount earned by them in the 1937 farm program, when the findings of fact show that they complied with the program and fail to show any basis for the Government's refusal to make the payments?

Statutes Involved

The statutes involved are the Agricultural Adjustment Act; the Soil Conservation and Domestic Allotment Act, as amended; the Supplemental Appropriation Act of February 11, 1936, as amended; and Title 31, United States Code, sections 71 and 74. The pertinent parts of these statutes are set out in the Appendix, *infra*, pp. 9-17.

Statement

In 1933 petitioners entered into a contract with the Secretary of Agriculture to plow up seven thousand acres of cotton for the considerations recited in the Secretary's "plow-up" contract (R. 98-101, 196A). The tenants of petitioners were given the opportunity to participate in the program and many of them did (R. 106-108). The only provision in the instructions of the Secretary as to the division of his payments between landlord and tenant was (R. 105):

> It is assumed that agreements by the operators and their tenants will provide for division of payments in proportion to their interest in the crop.

The county representatives of the Secretary of Agriculture had requested from higher officials an interpretation of the above-quoted provision and were told that it was a matter for the landlords and their tenants to work out (R. 106).

Petitioners accordingly agreed with their tenants on a division of the plow-up payments, and petitioners thereafter settled with their tenants on that basis (R. 107-108, 110).

After the Secretary of Agriculture in 1933, 1934, 1935, and 1938 made payments to petitioners for their compliance with this plow-up contract (R. 109), the Acting Secretary of Agriculture in 1941 determined, for the first time, that petitioners should have settled with their tenants on a different basis (R. 111-118). He thereupon set off the amount of $23,009.69 and deducted it from amounts due petitioners for their participation in the 1938 cotton program (R. 95, 119).

In the 1934 and 1935 cotton programs the Secretary proposed to pay the producers a price per acre for the number of acres they took out of cotton production (R. 120-121).

The payment was based on the cotton production history of said land during the years 1928 to 1932, inclusive, and in some instances on the 1931 and 1932 production, or the 1933 production alone (R. 122-123). When the program was first announced, petitioners advised the representatives of the Secretary that they could not participate in it because they had large tracts of land just cleared of timber and being brought into production and which had little or no production history (R. 123-124). After considerable discussion of the problem, and conferring with the Secretary's office in Washington, the County Agent, representing the Secretary in Mississippi County, and the County Committee, accepted and approved contracts with petitioners—one covering lands with the five-year history; one, four years, etc. (R. 121, 124-125). These contracts were accepted by the Secretary, or his agents or representatives, and payments were authorized by him and made to petitioners in accordance therewith 129-130, 140). The payments for 1934 were made to petitioners not later than January, 1935 (R. 130), and a part of the payments for 1935 were made prior to the Supplemental Appropriation Act of February 11, 1936, and a part thereafter from funds appropriated by said act (R. 140-141, 143).

In 1941 the then Acting Secretary of Agriculture made a determination that the 1934 and 1935 contracts had been erroneously executed and accepted and that petitioners should refund to the Government the amount of $11,262.19 for 1934 and $12,715.32 for 1935 (R. 130-135, 143-144). These amounts were set off against payments admittedly due petitioners for participation in and for compliance with the 1938 farm program (R. 95, 135, 144, 179).

In 1937 petitioners operated a large part of their lands by leasing them outright to tenants either for a cash rental or under an agreement whereby the tenants would clear a certain portion of the lands each year (R. 91-93, 174-175). On the unleased lands actually farmed by petitioners they

complied with the 1937 farm program and earned the total of $29,261.78 (R. 173-174, 176). This amount was withheld from petitioners because the Acting Secretary of Agriculture apparently held that petitioners in 1937 had adopted a scheme to defeat the purposes of the program when they rented their lands under cash and clearing-lease contracts (R. 83, 90, 175). On this point the Court of Claims found as a fact as follows (R. 176):

> 93. The evidence submitted is insufficient to show that plaintiffs' leases with their cash and clearing-lease tenants were entered into for the purpose of defeating the 1937 program or that their operations were carried out for that purpose.

The Court of Claims held that, with respect to 1937 and the plea of set-off, petitioners had the burden of proving that the determinations of the Acting Secretary of Agriculture were arbitrary and capricious and that this burden had not been met by petitioners (R. 186). With respect to the year 1938, the Court held that the Government could set off the amounts that it claimed to have erroneously paid petitioners for their performance in the 1933, 1934, and 1935 programs against the amount admittedly due them for 1938 (R. 178-179, 186-187).

Specification of Errors to Be Urged

The Court of Claims erred:

1. In failing to find and hold that any recovery of the amounts claimed by defendant in the plea of set-off for years 1933, 1934, 1935, and 1936 is barred by the Supplemental Appropriation Act of February 11, 1936, as amended, and by Title 31, United States Code, section 74.

2. In sustaining the plea of set-off as to the amount of $23,009.69 claimed therein for the year 1933; as to the

amount of $11,262.19, claimed therein for the year 1934; and as to the amount of $12,715.32, claimed therein for the year 1935.

3. In holding that petitioners had the burden of proving that the findings and decision of the Acting Secretary of Agriculture made in 1941 were arbitrary and capricious with respect to the year 1937 and also with respect to the set-offs.

4. In failing to hold that petitioners are entitled to judgment for the amount of $29,261.78, due them for their performance under the 1937 agricultural program, together with interest thereon as provided by law.

5. In failing to hold that petitioners are entitled to judgment for the amount of $74,413.12, due them for their performance under the 1938 agricultural program, together with interest thereon as provided by law.

Reasons for Granting the Writ

1. The decision below, in holding that the Government could recover by set-off amounts paid several years prior to the year of the original suit, is in direct conflict with *Kruszewski* v. *United States*, 7 Cir., 163 F. 2d 884, certiorari denied 333 U. S. 880, which held that under 31 U. S. C. § 74, the Government had only one year from the date of payment within which to assert its set-off. See also *Hinkley & Powers* v. *United States*, 49 C. Cls. 148, 150; and *United States* v. *Olmstead*, 8 Cir., 118 F. 433, 434.

2. As to the year 1937 the payments to petitioners were apparently denied because of an asserted administrative determination that petitioners had adopted a scheme to defeat the purposes of the program (R. 83, 90, 175). The Court of Claims found as a fact that the evidence submitted was insufficient to show that the leases involved and the operations of petitioners had been carried out for the purpose of defeat-

ing the 1937 program (R. 176; Finding 93). Where, as here, the record shows compliance with the regulations and requirements and no basis for the asserted administrative determination, a claimant is entitled to recover the amounts earned in the agricultural programs. It was so held in *Aycock-Lindsey Corporation* v. *United States,* 5 Cir., 171 F. 2d 518, 521. The opinion below clearly conflicts in principle with the *Aycock-Lindsey* case on this point.

3. The decision below, in holding that petitioners had the burden of proof with respect to the Government's plea of set-off (R. 186), conflicts with the long-established rule that a party pleading a set-off has the burden of proof. 47 Am. Jur. Set-off § 103; 31 C. J. S. Evidence § 104; and 7 Cyclopedia of Federal Procedure § 3174. This rule has been recognized by the Court of Claims in *Enright* v. *United States,* 73 C. Cls. 416, 431, 54 F. 2d 182, 189, certiorari denied 286 U. S. 543.

4. Farm programs such as those here involved have been in operation since 1933 and all indications point to further farm programs in the years to come. If, as the Court of Claims has held in effect, a far-removed succeeding Secretary of Agriculture may reopen final settlements at will, even though the statute of limitations has run and even when the facts are not in dispute, it is submitted that such a broad ruling should be reviewed by this Court. Particularly is such a review warranted when the *Aycock-Lindsey* case, *supra,* is believed to have established a contrary principle. The rights of a producer under these and similar farm programs is a matter of general importance and a question which this Court should set at rest.

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition should be granted.

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APPENDIX

Agricultural Adjustment Act (Act of May 12, 1933, c. 25, 48 Stat. 31):

* * * * * * *

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments.

* * * * * * *

Soil Conservation and Domestic Allotment Act (Act of February 29, 1936, c. 104, 49 Stat. 1148, 1151, as amended):

* * * * * * *

SEC. 7. (a) It is hereby declared to be the policy of this Act also to secure, and the purposes of this Act shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the income per person

not on farms that prevailed during the five-year period August 1909-July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio. The powers conferred under sections 7 to 14, inclusive, of this Act shall be used to assist voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased popoulation, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this section due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers. [16 U. S. C. A. § 590g.]

* * * * * * *

SEC. 8. (a) In order to carry out the purposes specified in section 7 (a) during the period necessary to afford a reasonable opportunity for legislative action by a sufficient number of States to assure the effectuation of such purposes by State action and in order to promote the more effective accomplishment of such purposes by State action thereafter, the Secretary shall exercise the powers conferred in this section during the period prior to January 1, 1942, except with respect to farming operations commenced in any State after the effective date of a State plan for such State approved pursuant to section 7. No such powers shall be exercised after December 31, 1941, except with respect to payments or grants in connection with farming opera-

tions carried out prior to January 1, 1942. [As amended June 28, 1937, c. 395, 50 Stat. 329; 16 U. S. C. A. § 590h.]

(b) Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 7 (a) by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts, determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by, (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion, (2) changes in the use of their land, (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption, or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 7 (a); or (5) any combination of the above. In arid or semi-arid sections, (1) and (2) above shall be construed to cover water conservation and the beneficial use of water on individual farms, including measures to prevent run-off, the building of check dams and ponds, and providing facilities for applying water to the land. In determining the amount of any payment or grant measured by (1) or (2) the Secretary shall take into consideration the productivity of the land affected by the farming practices adopted during the year with respect to which such payment is made. In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this sec-

tion. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually, the county committee for the county which shall consist of three members who are farmers in the county. The local committee shall select a secretary and may utilize the county agricultural extension agent for such purpose. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have the power to vote. In any county in which there is only one local committee the local committee shall also be the county committee. In each State there shall be a State committee for the State composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall be ex officio a member of such State committee. The ex officio members of the county and State committees shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary shall, as far as practicable, protect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encourage-

ment to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices; (b) soil-building crops and practices. [As amended Feb. 16, 1938, c. 30, 52 Stat. 31; 16 U. S. C. A. § 590h.]

• • • • • • •

(d) Any payment or grant of aid made under subsection (b) shall be conditioned upon the utilization of the land, with respect to which such payment is made, in conformity with farming practices which the Secretary finds tend to effectuate any one or more of the purposes specified in clause (1), (2), (3), (4), or (5) of section 7 (a). • • • [As added Feb. 16, 1938, c. 30, 52 Stat. 31; 16 U. S. C. A. § 590h.]

• • • • • • •

(e) Payments made by the Secretary to farmers under subsection (b) shall be divided among the landlords, tenants, and sharecroppers of any farm, with respect to which such payments are made, in the same proportion that such landlords, tenants, and sharecroppers are entitled to share in the proceeds of the agricultural commodity with respect to which such payments are made, except that payments based on soil-building or soil-conserving practices shall be divided in proportion to the extent which such landlords, tenants, and sharecroppers contribute to the carrying out of

such practices. Such payments shall be paid by the Secretary directly to the landlords, tenants, or sharecroppers entitled thereto, and shall be computed at rates which will permit the Secretary to set aside out of the funds available for the making of such payments for each year an amount sufficient to permit the increases herein specified to be made within the limits of the funds so available. * * * [As added, Feb. 16, 1938, c. 30, 52 Stat. 34; 16 U. S. C. A. §590h.]

* * * * * * *

SEC. 14. The facts constituting the bases for any payment or grant or the amount thereof authorized to be made under section 7 or 8 hereof, when officially determined in conformity with rules or regulations prescribed by the Secretary of Agriculture, shall be reviewable only by the Secretary of Agriculture. [16 U. S. C. A. § 590n.]

* * * * * * *

Supplemental Appropriation Act of Feb. 11, 1936 (Act of February 11, 1936, c. 49, 49 Stat. 1109, 1116-1117, as amended by the Act of June 25, 1936, c. 810, 49 Stat. 1925):

Payments for Agricultural Adjustment: To enable the Secretary of Agriculture to meet all obligations and commitments (including salaries and administrative expenses) heretofore incurred under the provisions of the Agricultural Adjustment Act, as amended, or regulations heretofore issued thereunder, except refunds pursuant to section 21 (d) of that Act, an additional amount of $296,185,000, together with a sum not exceeding $700,000, equal in amount to the unexpended balances of the funds heretofore established by the President under authority of section 15 (f) of the Agricultural Adjustment Act, as amended, and directed by the Secretary of Agriculture, with the approval of the President, to be spent for the benefit of agriculture in Puerto Rico and Hawaii, said sums to remain available until expended. The expenditures authorized under this appropriation

shall include rental and benefit payments, expenditures for rent and personal services in the District of Columbia and elsewhere, stenographic reporting services, supplies and equipment, past purchases and exchange of law books, books of reference, directories, periodicals, newspapers, traveling expenses, printing and binding in addition to allotments under existing law, and such other expenses as may be necessary for the accomplishment of the purposes of this appropriation. No part of the sums appropriated herein shall be used for rental or benefit payments in connection with adjustment contracts entered into on or after January 6, 1936, and as to those contracts entered into prior to January 6, 1936, no part of the sums appropriated herein shall be used for rental or benefit payments in connection with adjustment contracts unless there has been partial performance by the farmer: *Provided,* That such funds shall be available for rental and benefit payments in an amount that the Secretary determines to be fair and equitable to farmers who have applied for contracts, and who prior to January 6, 1936, have in good faith made adjustments in acreage and otherwise substantially complied with the requirements of the Secretary of Agriculture in connection with a crop program, regardless of whether contracts have been signed; and the determination of the Secretary as to the correct base acreage and production figures (regardless of the figures on which the contract was based) and as to the person or persons entitled to receive such fair and equitable payments shall be final and conclusive. Funds herein made available for administrative expenses shall be available for allotment to the bureaus and offices of the Department of Agriculture and for the transfer to such other agencies of the Federal or State Governments as the Secretary of Agriculture may request to cooperate with or assist in the administration of the work under this appropriation or of the Agricultural Adjustment Act, as amended, including necesary investigative work.

United States Code, Title 31, section 71:

PUBLIC ACCOUNTS TO BE SETTLED IN GENERAL ACCOUNTING OFFICE. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office. (R. S. § 236; June 10, 1921, c. 18, § 305, 42 Stat. 24.) [31 U. S. C. A. § 71.]

United States Code, Title 31, section 74:

CERTIFIED BALANCES OF PUBLIC ACCOUNTS; CONCLUSIVENESS; SUSPENSION OF ITEMS; PRESERVATION OF ADJUSTED ACCOUNTS; DECISION UPON QUESTIONS INVOLVING PAYMENTS. Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

The General Accounting Office shall preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller General shall render his decision upon any ques-

tion involving a payment to be made by them or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing said disbursement. (July 31, 1894, c. 174, § 8, 28 Stat. 207; June 10, 1921, c. 18, § 304, 42 Stat. 24.) [31 U. S. C. A. § 74.]

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The United States

On Petition for a Writ of Certiorari to the Court of Claims

REPLY OF PETITIONERS TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION.

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The brief for the United States in opposition to the petition for certiorari was served upon petitioners on February 18, 1950. Since it contains statements believed by petitioners to be the proper subject of a reply brief, this brief is being filed pursuant to paragraph 4(a) of Rule 38 of this Court.

THE STATEMENT MADE BY RESPONDENT.

On page 3 of its brief the Government says that for 1933—

> * * * petitioners allowed the share tenants to participate in the program only if a share tenant entitled to 75 per cent of the cotton would accept 66⅔ per cent of the government payment * * *.

The obvious implication of this curtailed statement is that the share tenant was unfairly treated. The true fact is directly to the contrary. Omitted from the Government's abbreviated statement regarding the division of this $20.00 payment are the following significant findings by the court below: (1) that the share tenant was saved the expense of picking the cotton ($4.50 per acre; R. 105, 107; cf. R. 194) and was given the use of the land rent-free for a corn crop (worth $12.00 per acre; R. 107, 108; cf. R. 195); also (2) that the actual division of this $20.00 was fully disclosed to the local government officials (R. 105-106; cf. R. 194-195); and (3) that an official interpretation of this ambiguous and "assuming" instruction was requested at the time by the local government officials and was refused by the Washington officials (R. 106; cf. R. 194).

Respondent also states (Br. 4) that petitioners received $29.16 per acre under an option provision and paid their tenants only on a basis of $20.00 per acre. To fairly present the picture on this point it should be noted that the tenants elected to take $20.00 per acre, which was paid them in 1933, and rejected the gamble in the cotton option plan (R. 111, 112-113; cf. R. 192), while the petitioners alone took *all the risk* of the option plan and did not receive all of their money until 1938 (R. 104, 109; cf. R. 192-193).

Petitioners submit that their position as to the 1933 program is well summarized in the dissenting opinion of Chief Judge Jones when he said (R. 195-196):

> The record is convincing that the plaintiffs worked more closely with those who were conducting the pro-

gram than did many of the large operators. In fact, some refused to comply in any way.

* * * * *

There were errors of calculation in those earlier years. These should have been and were corrected. There were also some honest mistakes of the rights under the law and regulations of that period. These, too, were corrected. But to permit employees [of the Government] to go prowling through the record of distant years *to find instances in which policies could be changed and thus avoid payment of admitted just claims* in later years, is beyond the power and authority of the Department. (Italics supplied.)

As to the year 1934 the Government in its brief (p. 4), glibly states that—

* * * petitioners had, contrary to the regulations, increased the amounts payable to them by a miscalculation of their base acreage. Petitioners also gave incorrect production figures as to the land described in each contract (R. 126-127).

Again the facts are over simplified to the point of distortion.

The record shows: that petitioners by telegram direct to Washington advised the Government that they were not satisfied to enter the program as originally outlined (R. 124); that a local official went to Washington to explain the peculiar situation in this area due to new lands being brought into production which prevented a fair base acreage (R. 123-124); and that thereafter the local government officials received a telegram which was considered by them as authority for accepting the contracts as submitted by plaintiff (R. 125, 127, 129). Moreover, the asserted discrepancies in the contracts were always known to all of the local government officials (R. 127, 130, 131).

In connection with the 1937 program, respondent summarily states that the petitioners were not paid because the Secretary of Agriculture found that the cotton acreage

planted by petitioners exceeded the base acreage allotted to them (Br. 5). Again respondent has made a one-sided translation of the record. The facts that the Secretary purportedly determined[1] are that "the areas actually worked by the Company were in performance" (R. 176) and that he would approve the action of the investigating committee in determining petitioners' total compliance by combining with their production the overproduction of various cash and clearing-lease tenants who did not participate in the program (R. 175). The only basis alleged for this merging of separate interests is that petitioners had adopted a scheme to defeat the purposes of the program (R. 83, 90). The Court of Claims found as a fact that the evidence did not show any such a scheme (R. 176). Since the premise of the Secretary of Agriculture is found to be unsupported, it logically follows that his merging of various production records is without authority.

REPLY TO THE ARGUMENT OF THE GOVERNMENT

1. The argument of the respondent is based on the assumption that the approval of the Acting Secretary of Agriculture of a "bases for settlement" (R. 118; cf. R. 190) automatically becomes a conclusive finding of fact upon the refusal of the citizen to accept the proposed settlement. Petitioners submit that such a "bases of settlement" in 1941 is not a finding which should supersede the statutory requirement of a finding of "substantial compliance" in order for the Secretary of Agriculture to disburse funds from the Supplemental Appropriation Act of February 11, 1936 (R. 140-141, 143; Pet. for Cert., p. 15).

Petitioners do not believe that the quotation from *United States v. Moorman* on which respondent relies (Br. 7) is in point. There is in the present case no dispute about the facts. The true facts have been known all along by the

[1] This determination was only for purposes of a compromise settlement (R. 118) as is pointed out in the dissenting opinion (R. 190).

local government officials. The question is rather whether the Secretary of Agriculture can refuse to interpret a vague 1933 instruction (R. 105-106); and can answer a specific 1934 problem in a way calculated to bring the producers into the program with the approval of the county officials; and then can a succeeding incumbent in 1941 repudiate what was done in good faith in the earlier years.

The Government next says (Br. 8):

> There was no finding in the Court of Claims that any determination as to the qualifications of petitioners for payment had been made by the Secretary prior to 1941 (R. 187).

The findings of that court show that certain payments were made to petitioners from the Supplemental Appropriation Act of February 11, 1936 (R. 140, 141, 143). That statute appropriated funds for payments to farmers where "there has been partial performance" under a contract with the proviso that (Pet. for Cert., p. 15):

> • • • the determination of the Secretary as to the correct base acreage and production figures (*regardless of the figures on which the contract was based*) and as to the person or persons entitled to receive such fair and equitable payments *shall be final and conclusive.* (Italics supplied.)

It is difficult under the foregoing language to see how the then Secretary of Agriculture could have made payments to the petitioners without having his 1936 findings as to "base acreage" become "final and conclusive" at that time "regardless of the figures on which the contract was based." Significantly, the Court of Claims was silent on this point.

The Government seeks to side-step this situation by next asserting that a full disclosure was not made to the Secretary (Br. 8). Petitioners not only personally sent a telegram to Washington, D. C. (R. 124), and helped to send a committee to Washington, D. C. (R. 124), but the county

officials were the representatives of the Secretary under the program (R. 121), and they fully understood the manner in which petitioners had handled the contracts (R. 125, 127; cf. R. 195).

With regard to the 1937 program, respondent asserts that petitioners must show that the alleged determination of the Secretary was "arbitrary or capricious" (Br. 9). Petitioners submit they have done so. As shown in discussing the facts, the only basis for combining petitioners' lands with those of their tenants was the unproved allegation that a scheme had been adopted to defeat the program (R. 83, 90). The Court of Claims found no such scheme (R. 176) and the Secretary found petitioners had not overproduced on their own land (R. 176). Absent any basis for adding other figures to those of the petitioners, the conclusion of the Secretary is both arbitrary and capricious.

2. Petitioners do not read 31 U. S. C. 74 as applying only to the Comptroller General. This statute permits the head of an "Executive Department" to obtain a revision of his accounts "within a year." It follows that the rationale of of the *Kruszewski* case applies with like force to the facts in the case at bar.

Petitioners, of course, do not agree that the Government can sustain its burden of proof on its set-off by merely offering in evidence a "bases of settlement" approved by the Acting Secretary of Agriculture (R. 118; cf. R. 190), when no such settlement has been made (R. 95).

CONCLUSION

The decision below by a divided court is believed to be erroneous. It conflicts in principle with the *Aycock-Lindsey* and *Kruszewski* decisions and is of such public importance as to warrant review by this Court.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 506

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF LEE WILSON AND COMPANY, A BUSINESS TRUST, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (R. 177-196) is reported at 84 F. Supp. 876.

JURISDICTION

The judgment of the Court of Claims was entered on July 11, 1949 (R. 197). On October 3, 1949 petitioners' motion for a new trial was overruled (R. 197). The petition for a writ of certiorari was filed on December 28, 1949. The jurisdiction of this court is invoked under 28 U. S. C. 1255(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Agriculture, under the Agricultural Adjustment Act of 1933, the Supplemental Appropriation Act of 1936, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938, might validly find in 1941 that overpayments had been made to petitioners in the years 1933 to 1936, and that petitioners had not complied with the regulations under the 1937 program.

2. Whether those findings are binding on the Court of Claims in the absence of a showing that they are arbitrary or capricious.

3. Whether the overpayments so determined by the Secretary of Agriculture may be set-off against payments admittedly due petitioners for 1938.

STATUTES INVOLVED

The pertinent parts of the applicable statutes are set forth in the Appendix, *infra,* pp. 11-13.

STATEMENT

Petitioners are the trustees of Lee Wilson and Company, a business trust, and in that capacity the owners of a large plantation in Mississippi County, Arkansas (R. 91). Under the Agricultural Adjustment Act of 1933, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938, petitioners participated in the crop production and soil conservation program of the Department of Agri-

culture for the years 1933 to 1938 (R. 93) and received payments for the years 1933 to 1936 (R. 109).

At the time of inauguration of this program the Agricultural Adjustment Administration issued the "1933 Cotton Adjustment Program Instructions to Field Workers" (R. 96) providing that "It is assumed that agreements by the operators and their tenants will provide for division of payments in proportion to their interest in the crop" (R. 96-97).[1] Payments were to be made under regulations on the basis of rentals paid by the Government for land taken out of cotton production (by a "plow-up") in 1933 (R. 96) and in the following years 1934, 1935, and 1936 for land taken out of cotton production (R. 120, 136-139, 150, 165). At the conclusion of an investigation conducted during the period 1939-1941, the Secretary of Agriculture found that petitioners had not effected proper distributions of the payments made to them for the years 1933-1936 (R. 113-118). The Court of Claims made like findings (R. 107, 110). Thus, for 1933, petitioners allowed the share tenants to participate in the program only if a share tenant entitled to 75 per cent of the cotton would accept 66⅔ per cent of the government payment, or if a sharecropper entitled to 50 per cent of the

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[1] This provision was later enacted into law as an amendment to Section 8 of the Soil Conservation and Domestic Allotment Act by Section 102 of the Agricultural Adjustment Act of 1938, *infra*, pp. 12-13.

cotton would accept 33⅓ per cent of the government payment (R. 107, 110, 115). Further, payments were made to petitioners under an option provision of $29.16 per acre, but petitioners made the distribution to their tenants on a basis of $20.00 per acre (R. 110, 113-118). Under the 1934 program the Secretary found (R. 131-134), also as did the Court of Claims (R. 122-127), that petitioners had, contrary to the regulations, increased the amounts payable to them by a miscalculation of their base acreage. Petitioners also gave incorrect production figures as to the land described in each contract (R. 126-127). These methods of noncompliance by petitioners with regulations issued under the appropriate statutes were found by the Secretary of Agriculture and the Court of Claims to have been repeated in respect of the 1934-1936 program.[2]

Petitioners, under the Soil Conservation and Domestic Allotment Act of 1936, as amended, in 1938 were entitled to $77,000.56 as determined by the State Office of the Agricultural Adjustment Administration (R. 95). There was issued to petitioners, however, a Treasury check for only $2,587.44, and the balance of $74,413.12[3] was set-

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[2] 1934 Cotton Acreage Reduction Plan (R. 135); 1935 Cotton Acreage Reduction Plan (R. 135-144, 145-150); 1936 Agricultural Conservation Program (R. 150-164, 165-167).

[3] This sum (in the plea of setoff the amount appeared as $74,435.38 (R. 95)) is made up of the following items: (1) $23,009.69 withheld by petitioners from their tenants in the 1933 Cotton Adjustment Program (R. 95, 119); (2) $11,262.19 overpayment to the petitioners in the 1934 Cotton

off by respondent against overpayments found to have been made to petitioners in 1933, 1934, 1935, and 1936 (R. 95). Petitioners brought suit in the Court of Claims (No. 45779) seeking recovery of the sum so withheld (R. 1) to which the respondent pleaded the setoff (R. 5). The Court of Claims held that petitioners were not entitled to recover (R. 188).

Petitioners also brought suit in the Court of Claims (No. 45997) for $29,261.78 (R. 78) alleged to be due as a result of petitioners' participation in the soil conservation program for 1937 under the Soil Conservation and Domestic Allotment Act as amended. This amount was not paid to petitioners because the Secretary of Agriculture found that the cotton acreage planted by petitioners exceeded the base acreage alloted to them (R. 176). While the Court of Claims found there was insufficient evidence to show that petitioners' leases had been entered into or their operations carried out for the purpose of defeating the 1937 program (R. 176), it left undisturbed the Secretary's findings that the acreage of cotton planted had exceeded the cotton bases established (R. 175-176),

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Acreage Reduction Plan (R. 120, 135); (3) $542.67 withheld by petitioners from their tenants in the 1934 Cotton Acreage Reduction Plan (R. 135); (4) $12,715.32 overpayment to petitioners in the 1935 Cotton Acreage Reduction Plan (R. 135, 144); (5) $5,932.93 withheld by petitioners from their tenants in the 1935 Cotton Acreage Reduction Plan (R. 145, 150); (6) $19,014.19 overpayment to petitioners in the 1936 Agricultural Conservation Program (R. 150, 164); and (7) $1,958.39 improperly paid to petitioners instead of their tenants in the 1936 Agricultural Conservation Program (R. 165, 167).

and denied recovery on the ground that petitioners had not sustained the burden of showing that the denial of the payment by the Secretary of Agriculture was arbitrary or capricious (R. 186).

ARGUMENT

1. The findings of the Secretary of Agriculture in 1941, that there had been overpayments to the petitioners for the years 1933 to 1936 (R. 118-119, 135, 144, 149-150, 163-164, 165-167), could be reversed by the Court of Claims at all [4] only if such findings were shown to be arbitrary or capricious or if the Secretary had no authority in 1941 to review payments made in the period 1933-1936. We submit that neither circumstance was here present.

(a) The Agricultural Adjustment Act of 1933, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938 (Appendix, *infra,* pp. 11-13) all specifically provide that administrative findings, particularly when they have been approved by the Secretary of Agriculture, are to be final and conclusive. In this respect, see S. Rep. 1481, 74th Cong., 2d sess., pp. 7-8; H. Rep. 2079, 74th Cong., 2d sess., p. 11. Assuming, therefore, that the court below had jurisdiction to entertain the instant case on the ground

[4] There is a serious question as to whether the court below had any jurisdiction at all to review the Secretary's determination. See dissenting opinion of Chief Judge Hutcheson in *Aycock-Lindsey Corporation* v. *United States,* 171 F. 2d 518, 522-523 (C. A. 5). We urged below that no such jurisdiction exists (R. 180-186), and should certiorari be granted we shall urge this Court to consider that question.

that it arose under a law of the United States, the scope of its review was sharply limited, since the Secretary's findings could be impeached only "on the ground of fraud, or such gross mistake as necessarily implied bad faith." *United States* v. *Moorman,* No. 97, at this Term, decided January 9, 1950, slip opinion, p. 4.

Here, in each instance the determination of overpayment was based on findings of fact by the Secretary that petitioners had not divided the payments with their tenants or sharecroppers in the correct amounts (R. 115-118, 135, 166-167), or that the petitioners had planted cotton acreage exceeding their base acreage allotment (R. 131-134, 143-144, 163-164, 176). The record also shows that the findings were based on substantial evidence and that petitioners had ample opportunity to present their arguments to the administrative bodies (R. 111-176, 183). As the Court of Claims correctly stated (R. 183):

> * * * we must accept such findings as conclusive since plaintiffs' proof fails to establish that the findings of the * * * Secretary of Agriculture were arbitrary or capricious. There was certainly evidence to support such findings and decisions, as is shown by our special findings of facts herein. * * *

(b) Nor does the fact that it was not until 1941 that the Secretary found that overpayments had been made for the 1933-1936 period affect his juris-

diction to make that final determination.[5] There was no finding in the Court of Claims that any determination as to the qualifications of petitioners for payment had been made by the Secretary prior to 1941 (R. 187). Consequently petitioners cannot properly now assert that the initial determination made by the Secretary in 1941 constitutes a redetermination merely because payments had previously been made to petitioners. And even if the payments made prior to 1941 are to be considered as a "finding" by the Secretary relative to petitioners' claim, it is clear that such a "finding" would not be conclusive on the Secretary since the payments were made without a full disclosure of the facts by petitioners to the Secretary (R. 187).

Finally, petitioners' contention that payments for their participation in the 1937 program were denied because they adopted practices designed to defeat the purpose of the program (Pet. 6-7) is patently erroneous. The Secretary specifically found that petitioners were not entitled to payment under the regulations because their planted cotton

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[5] Contrary to petitioners' contention (Pet. p. 7), there is no conflict between the decision below and *Aycock-Lindsey Corporation* v. *United States*, 171 F. 2d 518 (C. A. 5). There the Secretary of Agriculture made no determination as the facts were agreed on, 171 F. 2d at 522. The court there held it had jurisdiction of a suit against the United States for payments under the Tucker Act, 28 U. S. C. 1346, and that the only question presented was one of law, *i.e.*, whether two corporations should be considered as one with respect to the $10,000 limitation on payments to one participant in the programs under the Soil Conservation and Domestic Allotment Act of 1936 and the Agricultural Adjustment Act of 1938.

acreage exceeded their base acreage allotment (R. 176). Therefore, the finding of the Court of Claims that petitioners' operations were not carried out for the purpose of defeating the 1937 program (R. 176) is irrelevant. The pertinent matter here is, as pointed out by the Court of Claims (R. 186), that petitioners did not show that the denial of the 1937 payments was arbitrary or capricious.[6]

2. The Court of Claims correctly held that, overpayments having been made, they should be set off against the amount admittedly due for the year 1938. 28 U. S. C. (1946 ed.) 250(2); 31 U. S. C. (1940 ed.) 221; *Barry* v. *United States,* 229 U. S. 47, 53; *Wisconsin Central Railroad Company* v. *United States,* 164 U. S. 190, 210-211. *Kruszewski* v. *United States,* 163 F. 2d 884 (C. A. 7), relied upon by petitioners (Pet. 6), is not to the contrary. That case involved a redetermination by the Comptroller General of an account previously allowed by him and approved by Congress. Moreover, the statute which the court there held to preclude such revision was 31 U. S. C. 74. But that statute, originally made applicable to the Comptroller of the Treasury (The Dockery Act, 28 Stat. 207) and subsequently modified to apply to the Comptroller General, did not limit other officers of the Government. It is par-

[6] While *Aycock-Lindsey Corporation* v. *United States, supra,* held *obiter* that compliance with the program would entitle the participant to payments, that holding is of no consequence here where petitioners have not shown compliance with the regulations (R. 176).

ticularly inapplicable where, as here, a later statute expressly confers blanket powers on a government official to determine the amount due. *Hinkley & Powers* v. *United States,* 49 C. Cls. 148, and *United States* v. *Olmstead,* 118 Fed. 433 (C. A. 8) also relied on by petitioners, are inapposite. Both illustrate an attempted revision of accounts by the Comptroller of the Treasury to which the Dockery Act then applied.[7]

CONCLUSION

The decision of the court below is clearly correct and no conflict of decision exists. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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FEBRUARY, 1950

[7] In this setting, cases such as *Enright* v. *United States,* 73 C. Cls. 416, are inapplicable. While the burden of proving the amount of a setoff is ordinarily on the defendant, that burden has been met when the setoff is supported by an administrative finding which is made final and conclusive by law unless proved to have been arbitrary and capricious.

APPENDIX

Agricultural Adjustment Act of 1933 (48 Stat. 31).

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments. * * *

* * * * *

SEC. 10 [7 U.S.C. 610] * * *

(c) The Secretary of Agriculture is authorized * * * to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him * * *.

* * * * *

(e) The action of any officer, employee, or agent in determining the amount of and in making any rental or benefit payment shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

Supplemental Appropriation Act of February 11, 1936, c. 49 (49 Stat. 1109, 1117, as amended by the Act of June 25, 1936, c. 810, 49 Stat. 1925).

> * * * *Provided,* That such funds shall be available for rental and benefit payments in an amount that the Secretary determines to be fair and equitable to farmers who have applied for contracts, and who prior to January 6, 1936, have in good faith made adjustments in acreage and otherwise substantially complied with the requirements of the Secretary of Agriculture in connection with a crop program, regardless of whether contracts have been signed; and the determination of the Secretary as to the correct base acreage and production figures (regardless of the figures on which the contract was based) and as to the person or persons entitled to receive such fair and equitable payments shall be final and conclusive. * * *

Soil Conservation and Domestic Allotment Act of 1936 (49 Stat. 1148, 16 U.S.C. 590n).

> SEC. 14. The facts constituting the bases for any payment or grant or the amount thereof * * * when officially determined in conformity with rules or regulations prescribed by the Secretary of Agriculture, shall be reviewable only by the Secretary of Agriculture.

Agricultural Adjustment Act of 1938 (52 Stat. 31).

> SEC. 102 [16 U.S.C. 590h]. Section 8 of the Soil Conservation and Domestic Allotment

Act, as amended, is further amended by adding a new subsection as follows:

"(e) Payments made by the Secretary to farmers under subsection (b) shall be divided among the landlords, tenants, and sharecroppers of any farm, with respect to which such payments are made, in the same proportion that such landlords, tenants, and sharecroppers are entitled to share in the proceeds of the agricultural commodity with respect to which such payments are made, * * *."

* * * * *

SEC. 385 [7 U.S.C. 1385]. The facts constituting the basis of any Soil Conservation Act payment, parity payment, or loan, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary or by the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

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